Supreme Court, U.S.
FILED
SEP 25 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-299

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

O. LLOYD HUTCHISON,

Petitioner,

v.

JAMES S. THOMAS, ET AL.,

Respondents.

RESPONDENTS' JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE CASE

In this unusual proceeding, Petitioner Hutchison, an ordained United Methodist minister, turned to the secular courts for redress of what he termed his wrongful "enforced separation" from active service as a pastor at the hands of his religious superiors.

In his lengthy original Complaint herein, Rev. Hutchison aired a litany of grievances against the respective defendants including the Petitioner's presi-

ding Bishop and the Judicial Council of the United Methodist Church, that denomination's highest judicial tribunal. Included in the Complaint were contentions that defendants had "improperly applied" provisions of United Methodism's Book of Discipline governing the appointment and placement of ministers (original Complaint at par. 14); and that various units of the denomination had been "misled" and "misguided" in bringing about Rev. Hutchison's enforced early retirement (Id. at par. 27). Petitioner further alleged that in the process of all this, defendants were guilty of "fraudulent or collusive or arbitrary" action (Id. at par. 14) as well as defamation (Count IV), intentional infliction of emotional distress (Count VI) and breach of contract (Count VII).

On December 5, 1984, Petitioner Hutchison filed an amended complaint,

repeating, albeit in greater detail, the theories that Rev. Hutchison was a victim of "fraudulent or collusive or arbitrary application of the Discipline of the United Methodist Church" (Amended Complaint at par. 16), that defendants had wrongly evaluated and misrepresented his "appointability" as a minister (Amended Complaint at pars. 46, 50), had failed to deal with Rev. Hutchison in a proper "consultative manner" under the Book of Discipline (Id. at par. 49) had misguided the Church's Judicial Council (Id. at par. 103), and in the process, had deprived him of employment "in violation of the Discipline of the United Methodist Church or the public policy of the State of Ohio." (Id. at par. 111.)

Significantly, Rev. Hutchison also sought in his amended complaint to join as a party-plaintiff, his wife, an Ohio resident, seeking additional damages for

ner alleged "loss of consortium" (Count IX). He asserted that the Court could entertain tnis suit in its amended form, as a matter of "pendent jurisdiction." (Amended Complaint at par. 8) However, the Amended Complaint described co-plaintiff E. Louise Hutchison, as a "citizen of Ohio" (Id. at par. 2), the same domicile as a number of the defendants in this diversity action. (Id. at pars. 3, 5)

Respondents moved to dismiss on the theory that the civil courts have no subject matter jurisdiction of an essentially religious controversy involving clergy selection or retention. Tney also pointed out that the Amended Complaint, on its face, had destroyed the diversity jurisdiction of the Court under 28 U.S.C., Section 1332(a). On December 11, 1984, the District Court filed its Memorandum of Opinion granting tne motion of

the Judicial Council on benalf of all defendants to dismiss the action for want of subject matter jurisdiction. The Court noted, additionally, that the original Complaint failed to comply with the pleading requirements of Rules 8(a), 9(b) and 10(b), Fed.R.Civ.P., and was dismissed for that reason as well. (Unpublished Slip Opinion at 4, n. 2) While the District Court did not comment specifically on Rev. Hutchison's attempted amendment and joinder of his wife as a co-plaintiff, the effect of its decision was to reject, sub silentio, that amendment.

The Sixth Circuit affirmed in an opinion filed April 28, 1986, Hutchison v. Thomas, et al., 789 F.2d 392 (6th Cir., 1986). It reasoned that First Amendment principles dictated application of the "rule of deference" since there was no adequate showing in the pleadings

of fraud or collusion of a nature which would "undermine the very authority of the decision-making body." It thus rejected Petitioner's request that it intervene on the basis of the so-called "fraud exception" found in dictum in this Court's decision in Gonzales v. Roman Catholic Archbishop, 280 U.S. 1, 16 (1929), 789 F.2d at 395.

In view of its decision on federal constitutional grounds, the Sixth Circuit did not address Respondents' contention that Rev. Hutchison's amended complaint destroyed the Court's diversity jurisdiction. Nor did it find it necessary to deal with Respondents' other challenges to the adequacy of Hutchison's pleadings. 789 F.2d at 396, n. 2.

SUMMARY OF ARGUMENT

This case is a dispute over subjective judgments made by officials of a religious denomination relative to the

fitness of a clergy-person to continue in religious ministry. As such, it is beyond the jurisdiction of civil courts. Assuming that the so-called "Gonzales fraud exception" permitting limited civil court intervention in religious disputes has any vitality at all as this time, this is not an appropriate case for its application. Nor do "neutral principles" of law utilized by this Court for resolution of church property disputes have any application to controversies involving clergy selection and discipline.

REASONS FOR DENYING THE WRIT

As should be apparent from a reading of the original and Amended Complaints herein, the basic objective of this suit is to draw the secular courts into a dispute between a clergyman and his religious superiors over the adequacy of the former's service as a minister of the

Gospel. This issue was decided adversely to Rev. Hutchison by a number of religious units including the annual conference composed of all of Rev. Hutchison's clergy peers. This decision was also upheld by the Judicial Council which is, in effect, the "Supreme Court" of United Methodism. (Ex. B to Defendants' Memorandum in Support of Motion to Dismiss Complaint.)

Rev. Hutchison opened his brief in the Court below with the following disclaimer:

> "No specific religious doctrine or precept of the United Methodist Church is in any way relevant to this litigation."
>
> Appellant's Brief before Sixth Circuit at 2.

Rev. Hutchison's own pleadings, however, negate the disclaimer. A centerpiece of the Amended Complaint is the allegation that:

"At all relevant times the Plaintiff has acted according to the Discipline of the United Methodist Church."

Amended Complaint at par. 14.

It is pertinent to ask how this Court could adjudicate the above claim of adherence to the Discipline without wading into a dismal swamp of ecclesiastical tenets and precepts.[1/] The impropriety of the task which Rev. Hutchison sought to place before the federal judiciary is made even clearer by considering the striking forms of relief which he has requested in his original and Amended Complaints. The civil courts are requested to enter orders:

"Directing ... BISHOP THOMAS ... to show cause why plaintiff should

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1/ Cf. Prof. Chaffee, The Internal Affairs of Associations Not-For-Profit, 43 Harv.L.Rev. 993, 1021 (1930).

> not be restored to the appointive process under the Discipline ... and thereby declared 'appointable' and in good standing therein ...."
>
> and
>
> "Directing the defendant EAST OHIO CONFERENCE to ... certify him ... as an 'appointable minister' under the Discipline ..."
>
> and
>
> "... vacating as null, void and tainted with fraud ... the proceedings of the defendant, JUDICIAL COUNCIL, regarding Decision 522 and its subsequent refusal to rehear said decision." (Emphasis added)
>
> Demands for Relief at p. 12, Original Complaint, page 28, Amended Complaint.

It is important to scrutinize the nature of the "fraud" of which Respondents stand accused; particularly so in light of the repeated references to "falsified documents" in the Petition for Writ of Certiorari," darkly implying some unspecified alteration or forgery of Respondents' paperwork or records. In actuality, the pleadings and attachments

negate the existence of such misconduct. "Falsified documents" is merely Petitioner's way of describing documents containing conclusions about his fitness as a pastor with which he does not agree. The true nature of this "fraud" case, as illustrated by Rev. Hutchison's own words, is as follows:

> "The individual defendants acted to have the plaintiff declared 'unappointable.' ... The essence of plaintiff's claim is that this false characterization of his ministry was carried out through fraud and misrepresentation ...." (Emphasis added)
>
> Appellant's Brief before Sixth Circuit at 7.

In short, this suit, though larded with verbiage about "falsified documents" and "wilfull", "wanton", "fraudulent", "conspiratorial", "malicious" and "outrageous" conduct, is in reality, a quest for civil review of subjective judgments made by religious officials and units that a minister had become "unappoint-

able" due to recurring problems in his relationships with local United Methodist congregations. The Sixth Circuit correctly recognized this.

Should any further examples of this point be needed, they are found in abundance in the Amended Complaint. For example, the civil courts are being asked to revisit the following matters:

(a) What was the real "consensus of opinion" concerning Rev. Hutchison's competence within the Pastor-Parish Relations Committee of the Minerva Congregation during the years 1976 through 1979? (Amended Complaint at pars. 26, 29)

(b) Was such committee really "unanimous" in its opposition to Rev. Hutchison's continued service as pastor at Minerva? (Id. at par. 31)

(c) Did Bishop Thomas and defendant Vining fail to "obey the wishes" of the Tiffin Congregation's Pastor-Parish

Relations Committee and thereby violate the consultative provisions of the Discipline? (Id. at par. 48)

(d) Was the meeting between Rev. Hutchison and the Bishop of March 14, 1980 in the nature of a confidential parishioner/pastor discussion or did its subject matter (placement of a new minister) inherently necessitate disclosure by the Bishop to his cabinet? (Id. at pars. 53, 58)

(e) Did the entire Annual Conference, composed of several hundred delegates from churches in the East Ohio area, err in concluding on two occasions (1981 and 1982) that Hutchison was "unappointable" to the pulpit of a United Methodist congregation? (Id. at par. 73)

(f) Was the entire Judicial Council "misguided" in its conclusion (Decision No. 522) that Rev. Hutchison could properly be involuntarily retired under the Discipline? (Id. at par. 27)

(g) Did Rev. Hutchison ask, or did he not ask, his Bishop to transfer him from Minerva Church to another congregation? On this point, Petitioner attached to his complaint a stenographic transcript of a colloquy between himself and Respondent Bishop as follows:

> BISHOP THOMAS: ... my point is that you requested a move. That elicited this letter [from Petitioner dated March 13, 1980]. That's the only point I'm making."
>
> "REVEREND HUTCHISON: I requested to be considered for a move." (Emphasis added)
>
> Joint Appendix below at F-2, pg. 57.

How this material can fairly be said to support a fraud case is difficult to discern. At best, it reveals a tendency by Petitioner to equivocate or "split hairs" over semantic differences with his superiors.

A. Civil Courts Will Not Review Decisions Of Religious Tribunals On Matters Purely Ecclesiastical Such As Internal Church Government And The Qualifications Of Clergy.

While there are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property (Jones v. Wolf, 443 U.S. 595 (1979)), they have steadfastly upheld the First Amendment's command that secular authorities may not interfere with the internal ecclesiastical workings and discipline of religious bodies. Watson v. Jones, 13 Wall 679, 20 L.Ed. 666 (1871); Bouldin v. Alexander, 15 Wall 131, 21 L.Ed. 69 (1872); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 97 L.Ed. 120 (1952); Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 49 L.Ed.2d 151 (1976); and Simpson v. Wells-Lamont Corporation, 494 F.2d 490 (5th Cir., 1974).

In Serbian, supra, this Honorable Court reversed a state supreme court which had overruled as "arbitrary" a religious tribunal's decision to defrock one of its bishops. This Court summarized its holding in clear and unequivocal terms:

> "In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them."
>
> (49 L.Ed.2d at 171)

In affirming the District Court's dismissal of Rev. Hutchison's suit, the Sixth Circuit was faithful to this Court's teachings and the unbroken line of authorities cited above. To the extent that Rev. Hutchison contends that

clergy selection matters may be treated differently than matters of doctrine and faith, he misapprehends the scope of the First Amendment's guarantees. Such guarantees extend to

> "The power [of churches] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." (Emphasis added)
>
> Kedroff v. St. Nicholas Cathedral, supra, 344 U.S. at 119, 97 L.Ed. at 138

In Serbian, supra, the Supreme Court reconfirmed that the scope of religious freedoms is not merely limited to teachings and beliefs, but also, to internal organization and governance:

> "Nor is there any dispute that questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern...."
>
> 426 U.S. at 717; 49 L.Ed.2d at 167

In Simpson v. Wells-Lamont Corporation, et al., supra, 494 F.2d 490 (5th Cir., 1974), the Fifth Circuit upheld the dismissal of a suit brought by an expelled United Methodist minister who sought damages and other relief against his bishop and other denominational officials and units. The Fifth Circuit said:

> "This case involves the fundamental question of who will preach from the pulpit of the church, and who will occupy the church parsonage. The bare statement of the question should make obvious the lack of jurisdiction of a civil court. The answer to that question must come from the church." (Emphasis added)
>
> * * * *
>
> "The interaction between the church and its pastor is an integral part of church government."
>
> 494 F.2d at 492, 493

To the same effect, see the cases of Kaufmann v. Sheehan, 707 F.2d 355, 358 (8th Cir., 1983) and Nunn v. Black, 506 F.Supp. 444, 448 (W.D.Va., 1981).

In the instant case, Petitioner Hutchison asks this Court to intervene in a dispute finally decided by United Methodism's highest judicial tribunal, to review the work product of that tribunal, and to "vacate" its decision. He also asks the Court to search the record of scores of committee and cabinet meetings as well as sessions of the full Annual Conference and to make its own judgment as to whether he is fit for active service as a United Methodist minister. As in Simpson, supra, the bare statement of the question should make obvious the lack of civil jurisdiction over such an undertaking. Practical considerations as well as constitutional commands dictate that courts cannot be and should not become the forum to redress grievances surrounding the assignment of clergy within a religious system.

B. If The So-Called Gonzales "Fraud Exception" Has Any Validity At All, This Is Not A Case For Its Application.

The linchpin of Petitioner's position is Justice Brandeis' dictum in Gonzales v. Archbishop, 280 U.S. 1, 16, 74 L.Ed. 131 (1929), creating a so-called "fraud exception" to the otherwise inflexible command that secular courts defer to church tribunals on matters purely ecclesiastical. (280 U.S. at 16) However, since the time of Gonzales, very little, if any, life has been breathed into this exception. It is submitted that this Court's Serbian decision, supra, all but eliminated the exception, implying that it would take an extraordinary fraud case indeed to warrant even "marginal" review by a civil court. (426 U.S. at 711-12)

After substantial research, we are aware of no case in which a federal court has utilized the "Gonzales exception" to

review a disciplinary decision by a major denomination's highest tribunal dealing with the status of one of its pastors. Whatever may be the ultimate fate of Gonzales, we submit this is not the time or the correct setting for this Court to activate the "fraud exception." As the Sixth Circuit wisely recognized, this is essentially a dispute over subjective judgments within a religious organization. No egregious conduct is evident, even if the pleadings are given a strict and literal reading.

Finally, on the question of the applicability of Gonzales, we urge this Court to uphold the sound approach followed by the Eighth Circuit in Kaufmann v. Sheehan, supra. There, the Court refused jurisdiction over the suit of a defrocked Catholic priest, even though the Court conceded that his complaint "might arguably state a claim for fraud

or collusion" and that Gonzales "suggested a possible exception to the Watson [deference] rule." 707 F.2d at 358. Notwithstanding these considerations, the Eighth Circuit recognized the distinction between the "religious" and "secular" acts of a church defendant, noting that Serbian did not foreclose "marginal civil court review under the narrow rubrics of 'fraud or collusion when church tribunals act in bad faith for secular purposes.'" (Emphasis added) In other words, the Court not only specified that there must be a clear showing of fraud, but also, that the fraud be a means to the achievement of a secular end.

The Court concluded its analysis by observing that the status of a clergy person goes to the heart of internal religious organizations -- a uniquely religious, non-secular concern. Hence, Gonzales has no application:

> "It is apparent that a priest or other member of the clergy occupies a particularly sensitive role in any church organization. Significant responsibility in matters of the faith and direct contact with members of the church body with respect to matters of faith and exercise of religion characterize such positions."
>
> 707 F.2d at 359

So, too, is this the case in the proceeding at hand. Rev. Hutchison's status as a pastor is a matter of religion -- not of secular employment and, consequently, Gonzales cannot apply.

The importance of the rule of deference in a religious setting is manifest. The very existence of a church can ultimately turn upon its ability to freely choose who will preach its values. That choice must remain unfettered by judicial oversight or it will become a self-conscious and inhibited one.

C. This Dispute, As Framed In The Pleadings Of Petitioner, Is Not Susceptible To A "Neutral Principles" Analysis.

Rev. Hutchison argues (Petition at 13) that the courts have overlooked a clear path to the proper resolution of this case, namely, the "neutral principles" doctrine most recently discussed in Jones v. Wolf, 443 U.S. 595, 61 L.Ed.2d 775 (1979). We suggest that it is plaintiff who has overlooked the true meaning of Jones and other decisions dealing with "neutral principles."

First, as the Sixth Circuit recognized, 789 F.2d at 396, Jones and its predecessors have limited the use of the "neutral principles" doctrine to religious property dispute cases.

Second, the fact that this Court has not extended the "neutral principles" doctrine to other kinds of religious controversies in the areas of church

government, order and discipline is not mere happenstance. Property matters, unlike church discipline and order, are inherently secular. (See, for example, Ellman, Driven From The Tribunal: Judicial Resolution of Internal Church Disputes, 69 Cal.L.Rev., 1378 where property is seen as "distinctly secular.") Deeds, charters, trust clauses and the like are often readily available to afford an opportunity for "neutral" analysis in church property cases. By contrast, relations of clergy with their churches involve a heavy overlay of subjective judgment, colored by doctrine, faith and religious tradition. Governing provisions of ecclesiastical law generally are not stated in religiously neutral terms as are deeds and charters.

In sum, the "neutral principles" approach is not workable in the present framework. Even assuming, arguendo, that

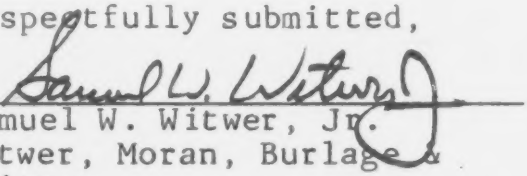
such approach may theoretically be extended beyond the property realm, Rev. Hutchison has failed to point to a single document or disciplinary provision which would be truly "neutral" and devoid of religious content, thus affording this Court a constitutionally acceptable basis for dealing with the matters here in dispute. Instead, his pleadings graphically demonstrate that he is beckoning to the Court to enter the "dismal swamp" forbidden by the First Amendment.

CONCLUSION

Petitioner has stated no cause of action, either in his Complaint or in his Amended Complaint over which a civil court has subject-matter jurisdiction. To the contrary, the controversy attempted to be brought before this Court is an issue wholly outside the province of this or any Court. Settled principles of

deference and abstention under the First Amendment require that the actions of the courts below in refusing to become embroiled in this religious dispute be affirmed. Accordingly, the Petition for Writ of Certiorari must be denied.

Respectfully submitted,



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